



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

Commissions Under CPC

Author Name: Supriya Ramchandra Morudkar

T.Y. LL.B. – Semester V

College: Subhash Desai College of Law

Affiliated to Mumbai University

ABSTRACT

Commonly, in civil trials, most cases need an expert's advice to resolve the disputed issue to dispute. Where the Court pendency is in huge numbers, so many property-related disputes are in the queue waiting for justice. If the Court deems it fit, in certain matters that are beyond its jurisdiction, then it may appoint a Court Commissioner to investigate or inquire into the said matter. This kind of case can be resolved with expert knowledge in a shorter timeframe.

The appointed Commissioner should be independent, impartial and disinterested in the suit and the parties involved. Section 75 of the Code of Civil Procedure primarily addresses the commissions issued by the Courts. In some circumstances, other than the High Court for an examination of any person may be issued to any Court situated in a state. Before issuing any commission under this order (**order XXVI of the Code of Civil Procedure**), the Court may order such sum, if any, as it thinks reasonable for the expenses of the commission to be, within a time to be fixed, paid into Court by the party at whose instance or for whose benefit the commission is issued.

To reduce the burden on the Courts, this kind of commission plays the most crucial role. Reports of the commission are very helpful during Court trials; they can also help in verdicts given by the Court, but the decision of the Court is final. The investigation report of the Court Commissioner will be used for reference purposes only while delivering a verdict on the said matter.

KEY WORDS

1. High Court
2. Commissioner
3. Order
4. Investigation
5. Proceedings
6. Reports

INTRODUCTION

What is the Commission Under CPC?

A commission is essentially an instruction or a role conferred by the Court on an individual, empowering them to act on the Court's behalf to perform certain judicial tasks. The person who carries out these tasks is known as a Court Commissioner. For instance, in cases requiring local investigations or recording evidence from a witness who cannot attend the Court, a Commissioner is appointed to execute these responsibilities.

Who Can Appoint a Commissioner?

Under the CPC, the Court that issues the commission is responsible for appointing the Commissioner. Section 75 of the CPC states that "the Court" can issue a commission subject to certain limitations and restrictions. Therefore, the Court adjudicating the suit has the authority to appoint the Commissioner. This appointment is typically made at the Court's discretion, either upon the application of any of the parties involved to dispute or by the Court's own motion (*suo moto*).

Who Can Be Appointed as a Commissioner?

Appointment as a Commissioner

- Generally, there is a panel of Commissioners that is **formed by a High Court** in which advocates competent to carry out the commission issued by the Court are selected.
- The person appointed as Commissioner should be independent, impartial, and disinterested in the suit and the parties involved in it. Such a person should have the requisite skills to carry out the commission.

The individuals appointed as Commissioners are generally selected from a panel formed by the High Court. This panel includes advocates who are deemed competent to undertake the tasks assigned by the Court. The appointed Commissioner should be independent, impartial and disinterested in the suit and the parties involved. Additionally, the Commissioner must possess the requisite skills to perform the designated duties efficiently.

For instance, appointing a person who cannot comprehend accounts and documents to adjust accounts would be impractical and a waste of resources. Similarly, a person without scientific qualifications should not be appointed to conduct scientific investigations.

The District Judge supervises the subordinate Courts, ensuring special care is taken in the appointment process. The same individual should not be repeatedly appointed for all commissions, and persons frequently seen around the Court should be avoided to maintain impartiality.

Procedure for Appointment of a Commissioner

Every High Court has the authority (Article 227 of the Indian Constitution) to establish rules and regulations to be followed by the subordinate Courts. The procedure for the appointment of a Commissioner is detailed in the rules of each state's High Court. For instance, Chapter 10 of the Delhi High Court Rules, 1967, outlines the following procedure for the appointment of Commissioners in Delhi:

1. A panel consisting of no more than four Commissioners, including young persons and a lady lawyer, is formed by the Court for recording evidence.
2. The District Court notifies the bar about the vacancies for Commissioners and the bar forwards the applications received to the Court, which then forwards them to the High Court with its recommendations.
3. The term of appointment is generally three years, extendable by an order of the High Court, but no Commissioner can be appointed for more than six years.

When Can a Commissioner Be Appointed by the Court?

A Commissioner can be appointed when the Court issues a commission. Section 75 of the CPC empowers the Court to issue commissions for various functions, including:

- Commission is an instruction or role given by the Court to a person who is appointed as a **Commissioner** to act on behalf of the Court.
- The Court authorises the person so appointed to do everything that the Court requires to do for the accomplishment of justice.
- A person who is appointed as a Commissioner is known as a Court Commissioner.
- The Court's power to issue a **commission is discretionary**; it can be exhausted by the Court either on application by the parties to the suit or on its own motion.

ROLE OF COURT COMMISSIONER

1 Examine Witnesses (Order 26 Rules 1-8)

The general rule of evidence mandates that evidence must be presented before the Court and recorded in open Court. However, in extraordinary circumstances, the appearance of a witness can be dispensed with and the witness can depose evidence through a Commissioner. This exemption applies in the following scenarios:

The Court has the power to issue a commission to carry out the following functions.

- **Commissions to Examine Witnesses**
- **Rule 1 to 8 of Order XXVI** deals with the Examination of Witnesses.
- The general rule of evidence is to bring **the evidence before the Court** and it must be recorded in open Court.
- But in extraordinary circumstances, the appearance of a witness is dispensed, and the witness is allowed to depose evidence without appearing in Court.
- The Court may **issue a commission for the examination of a witness** in the following circumstances:
 - If a person is to be examined as a witness **who resides within the local limit of the Court's jurisdiction** and is exempted under the code from attending the Court, or is from **sickness or infirmity unable to attend the Court**, or
 - If he resides **beyond the local limits of the jurisdiction** of the Court, or
 - If he is about to **leave the jurisdiction** of the Court, or
 - If he is a **government servant** and cannot, in the opinion of the Court, attend without detriment to the public, or if he is residing out of India and the Court is satisfied that his evidence is necessary.

2. Commission for Local Investigation

- As per **Rule 9 of Order XXVI**, the Court can issue a commission for local investigation.
- The Court can issue a commission, if it considers proper at **any stage of the suit**, for the following purposes:
 - for explanation of **any disputed issue**.
 - for the determination of the **market value of any property**.
 - for determination of **mesne profits, damages, annual net profits, etc.**
 - To issue such a commission depends upon the discretion of the Court.

3. Commission for Scientific Investigation

- **Rule 10 A of Order XXVI** deals with the issue of commission for scientific investigation.
- According to this rule, when the Court thinks that any **scientific issue is involved in the case before it** and a proper solution of that issue is not forthcoming, then the Court, in the interest of justice, by investigating the case, **can issue a commission for submission of its report.**

4. Commission to Perform Ministerial Act

1. **Rule 10B of Order XXVI** deals with the issue of commission for the performance of ministerial acts.
 2. According to this rule, when the Court thinks that in the suit before it, any question of performance of a **ministerial act is involved**, then it can issue a commission, in the interest of justice, for the performance of a ministerial act.
5. **Apprehension of Danger:** If a witness apprehends danger to their life and informs the Court, and if the Court deems it necessary to record their evidence, a commission may be issued. However, if a party accused of fraud seeks examination via commission, the Court should avoid issuing the commission to prevent abuse of the procedure.
6. **Pardanashin Ladies:** The appearance of pardanashin ladies, whose attendance is exempted under Section 132 of the CPC, can be dispensed with, and their evidence can be recorded by a Commissioner.
7. **Civil or Military Officers:** Civil or military officers of the government, whose attendance would be detrimental to public service, can have their evidence recorded by a Commissioner (Order 26 Rule 4).
8. **Interest of Justice:** The Court can issue a commission if it believes it is in the interest of justice, for expeditious disposal of the case or for any other reason, notwithstanding any rules provided in the order (Order 26 Rule 4A).
9. **Persons Exempt from Attendance:** Individuals who cannot be ordered to attend the Court in person under Order 16 Rule 19 can be examined by issuing a commission (Order 26 Rule 4 Proviso).
10. **Persons Detained in Prison:** A commission can be issued to examine individuals detained in prison (Order 26 Rule 7).

INVESTIGATIONS MADE BY THE COMMISSIONER

To Make Local Investigations (Order 26 Rules 9-10)

Commissions can be issued to conduct local investigations to clarify any point of controversy in the suit. This is especially useful in cases involving property disputes where the Commissioner can visit the site and submit a report to the Court.

To Hold Scientific, Technical or Expert Investigations (Order 26 Rule 10A)

In cases requiring scientific, technical or expert investigations, a Commissioner with the necessary qualifications can be appointed to conduct these investigations and provide the Court with an expert report.

To Conduct Sale of Property (Order 26 Rule 10C)

For the sale of property in execution of a decree, a Commissioner can be appointed to conduct the sale and report the proceedings to the Court. Any movable or immovable property related to the dispute. When tasked with selling property, the Commissioner must conduct the sale in accordance with the Court's directions and report the proceedings.

To Adjust Accounts (Order 26 Rule 11)

When complex financial transactions are involved and it is necessary to adjust accounts, a Commissioner can be appointed to scrutinise the accounts and report to the Court.

To Perform Ministerial Acts (Order 26 Rule 12)

A Commissioner can also be appointed to perform ministerial acts, such as signing documents or carrying out other administrative tasks on behalf of the Court.

To Make Partition (Order 26 Rule 13)

In suits involving the partition of property, a Commissioner can be appointed to divide the property in accordance with the Court's decree and submit a report on the partition.

POWERS AND DUTIES OF A COMMISSIONER

A Commissioner appointed by the Court has the authority to undertake the tasks specified in the commission. The powers and duties of the Commissioner include:

1. **Recording Evidence:** When appointed to record evidence, the Commissioner must ensure that the evidence is recorded accurately and comprehensively.
2. **Local Investigation:** If conducting a local investigation, the Commissioner must visit the site, gather relevant information and submit a detailed report to the Court.
3. **Adjusting Accounts:** In cases requiring account adjustment, the Commissioner must thoroughly examine the financial records and prepare a report on the adjustments made.

4. **Scientific or Technical Investigations:** For scientific or technical investigations, the Commissioner must carry out the investigation with precision and submit an expert report.
5. **Sale of Property:** When tasked with selling property, the Commissioner must conduct the sale in accordance with the Court's directions and report the proceedings.
6. **Ministerial Acts:** For ministerial acts, the Commissioner must perform the tasks diligently and report back to the Court.

CHALLENGES FACED BY COURT COMMISSIONER:

Most cases referred to the Court Commissioner are related to property disputes. While resolving these kinds of disputes, the Court Commissioner is to be a non-biased person who can investigate the said dispute transparently and make a report accordingly, but sometimes it's very difficult to do so, just because of some influential situations. Such as some political pressure, influential persons who have their own personal interest in that particular property, try to create false situations and provide false information on such investigations. So, the Court Commissioner has to investigate the whole matter very sincerely and promptly. He has to record each thing very transparently and make his report accordingly.

Conclusion

The appointment of a commission under the CPC is a vital mechanism to ensure justice is served efficiently and effectively. By delegating specific tasks to a Commissioner, the Court can obtain detailed and specialised information, which aids in the proper adjudication of cases. The process involves careful selection and appointment of qualified individuals who can perform their duties impartially and competently. Understanding the roles, powers and procedures related to the appointment of commissions helps in appreciating the judicial system's efforts to deliver comprehensive justice. This kind of practice can help with speedy trials, and parties can get justice quickly. It can save time, money and manpower also. The overall Court is a supreme authority; the commission can express the facts and circumstances only. The report of the Court Commissioner can help deliver a verdict on the said matter.